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Paper No. 13

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APR 19 2004
OFFICE OF PETITIONS

In re Application of :
Ammicht, et al. :
Application No. 09/872,810 : **ON PETITION**
Filed: June 4, 2001 :
Attorney Docket No. 5-3-15 :

This is a decision on the paper filed April 12, 2004, which is being treated as a renewed petition under 37 CFR 1.137(b).

The renewed petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application was held abandoned for failure to timely file a declaration **and** substitute drawings in response to the Notice to File Missing Parts of Nonprovisional Application mailed on July 31, 2001. This Notice set a shortened statutory period for reply of two (2) months for applicants to submit an oath or declaration, together with substitute drawings. No extensions of time under 37 CFR 1.136(a) were obtained. No reply having been received, the above-identified application became abandoned by matter of law on October 1, 2001. Applicants filed a status inquiry on July 30, 2003. In response, a courtesy Notice of Abandonment was mailed on November 24, 2003.

Applicants filed an alternative petition to withdraw the holding of abandonment under 37 CFR 1.181, petition to revive under 37 CFR 1.137(a), and petition to revive under 37 CFR 1.137(b) on January 21, 2004.¹ However, the petitions were dismissed on all three counts in a decision mailed on February 19, 2004. Applicants then filed a renewed petition under 37 CFR 1.137(a)

¹ Included with the filing of the petitions was substitute drawings.

and 37 CFR 1.137(b) on March 1, 2004. However, these petitions were again dismissed in a decision mailed on March 8, 2004. With respect to the 37 CFR 1.137(a) petition, applicants did not establish that the failure to submit substitute drawings was unavoidable. With respect to the 37 CFR 1.137(b) petition, applicants did not supply the required reply - a copy of the 37 CFR 1.63 oath or declaration.

With the instant petition, petitioner supplied a copy of the 37 CFR 1.63 declaration. Petitioner previously paid the petition fee on January 21, 2004. 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3). The statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

With regards to petitioner's request that the fee charges for the petition to revive be "waived", petitioner is reminded that the fee accompanying a petition to revive is a **statutory** requirement, and therefore can not be waived.²

Lastly, petitioner is directed to the Manual of Patent Examining Procedure, which states in pertinent part:

The Office has revised the drawing review process to implement the eighteen-month publication of patent applications. Under the revised drawing review process, the Office of Initial Patent Examination (OIPE) will perform an initial review of drawings in new utility and plant patent applications filed on or after November 29, 2000 to see if the drawings can be effectively scanned for publication purposes. Design applications are not published. Therefore, drawings filed in design patent applications (whether filed before, on or after November 29, 2000) will be reviewed but not for publication purposes. The standard of review employed by OIPE is such that most drawings, including those that have been indicated by applicant to be informal drawings, will be accepted.

OIPE inspects the drawings to see if they can be effectively scanned and adequately reproduced. If the drawings are not acceptable, OIPE will object to the drawings and notify applicant that a timely submission of acceptable drawings (e.g., drawings which can be scanned) is required. This initial review process in OIPE is necessary in order to ensure that applications can be timely published. Under the OIPE review process, OIPE may object to and require corrected drawings within a set time period, if the drawings:

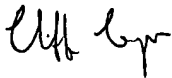
...

² See 35 U.S.C. 41(a)(7).

(D) do not have the appropriate margin or are not on the correct size paper. See 37 CFR 1.84(f) and (g). Each sheet must include a top margin of at least 2.5cm. (1 inch), a left size margin of at least 2.5 cm. (1 inch), a right size margin of at least 1.5 cm. (5 /8 inch), and a bottom margin of at least 1.0 cm. (3 /8 inch). The size of the sheets on which drawings are made must be either 21.0 cm. by 29.7 cm. (DIN size A4) or 21.6 cm. by 27.9 cm. (8-1 /2 by 11 inches).³

The application file is being forwarded to the Office of Initial Patent Examination for pre-examination processing.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-0272.



Cliff Congo
Petitions Attorney
Office of Petitions

³ MPEP 507.